

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
:
MALIBU MEDIA, LLC, : Case No.2:15-cv-02721-JS-ARL
Plaintiff, : Judge Seybert
vs. :
: :
JOHN DOE subscriber assigned IP address :
24.146.154.55, :
: :
Defendant. :
-----X

**DECLARATION OF COLETTE FIELD IN SUPPORT OF PLAINTIFF'S MOTION FOR
LEAVE TO TAKE DISCOVERY PRIOR TO A RULE 26(f) CONFERENCE**

[Remainder of page intentionally left blank]

**DECLARATION OF COLETTE FIELD IN SUPPORT OF PLAINTIFF'S MOTION FOR
LEAVE TO TAKE DISCOVERY PRIOR TO A RULE 26(f) CONFERENCE**

I, COLETTE FIELD, DO HEREBY DECLARE:

1. I am over the age of eighteen (18) and otherwise competent to make this declaration.
2. The facts stated in this declaration are based upon my personal knowledge and, if called upon to do so, I will testify that the facts stated herein are true and accurate.
3. My husband Brigham Field and I own Malibu Media d/b/a as X-Art.com. We began our business from scratch.
4. I was a real estate agent and my husband was a photographer.
5. When the real estate market started heading south I knew we needed to start a business together.
6. Brigham and I both felt that there was a lack of adult content that was beautiful and acceptable for women and couples. We wanted to create this type of content to satisfy what we hoped was an unfulfilled demand.
7. Our goal was to create erotica that is artistic and beautiful.
8. We chose the name 'X-Art' to reflect our artistic aspirations, and began investing all of our available money and resources into the production of content – particularly erotic movies with high production value and a cinematic quality.
9. We created an Internet website called X-Art.com.
10. No other person or entity has or can claim an ownership interest in the copyrights.
11. Brigham and I are currently and always have been the sole owners of Malibu

Media, LLC and its predecessor, our partnership.

12. Our customers can pay us a monthly recurring subscription fee of \$24.95, or an annual subscription fee of \$99.95 to access our entire library of HD Video content.

13. Internet subscription sales are and have always been by far our primary source of revenue.

14. As our business has grown our production value has also grown. We spend over two million dollars a year producing content, and millions more each year to run our business.

15. Currently we have tens of thousands of members, but we are finding it hard to grow and maintain the memberships as so many people are finding our films for free.

16. Each month, approximately 80,000 U.S. residents use BitTorrent to steal our movies.

17. We have worked hard and invested millions of dollars in our business in order to produce the best quality product.

18. For the first 3 years (when our site was not as popular) we didn't have as many issues with piracy. Now, that our videos are highly desirable, more people steal our videos than pay for a subscription.

19. We are even getting many complaints from our members (asking why they should pay when they are available for free on the torrents).

20. We feel people are unlawfully using valuable bandwidth (therefore money) from all people who use the Internet for lawful purposes, while making it harder for film producers, photographers, musicians, writers, designers (the kind of people our business depends on) to make a living.

21. We must protect our copyrights in order to survive and to hope for any growth.

22. Brigham and I have gone over our options many times and we realize that the only way we can protect our business and our ability to sell subscriptions is to go after the people who are stealing from us.

23. From my experience filing similar cases against other defendants throughout the country, once provided with the IP Address, plus the date and time of the detected and documented infringing activity, ISPs can use their subscriber logs to identify the name, address, email address and phone number of the applicable subscriber in control of that IP address at the stipulated date and time.

24. Our intention is not to cause financial hardship (this is very important to us); however, we want to deter infringement and be compensated for the intentional theft of our videos.

25. Brigham and I have repeatedly asked our attorneys to listen to exculpatory evidence and be prudent and use caution when pursuing our claims. And, I believe our attorneys are doing their best to enforce our copyrights in a lawful and appropriate manner.

26. We do not pursue our claims against all Doe Defendants. For example, once receiving discovery, we may learn that some Doe Defendants are on active duty in the military, a coffee shop with open wireless, or have some other circumstance that would prevent us from pursuing our claims.

27. We invest significant resources into pursuing all types of anti-piracy enforcement, such as Digital Millennium Copyright Act ("DMCA") takedown notices and

direct efforts aimed at infringing websites.

28. Despite sending thousands of DMCA notices per week, the infringement continues. And, if one searches for "X-Art" on a torrent website the site will reveal thousands of unauthorized torrents available for free.

29. We have never authorized anyone to put our works on a torrent website.

30. I firmly believe that we must exercise our rights under the Copyright Act to prevent infringement. Otherwise, we face an immediate and serious risk. It is simply impossible to compete with free.

31. We do not seek to use the Court system to profit from the infringement like some have suggested. As previously stated, revenues from subscriptions to X-Art.com are by far and away the dominant driver of Malibu Media's business. We want the infringement to stop. Accordingly, the purpose of these lawsuits is to motivate people to pay for subscriptions by deterring infringement and seek some reasonable compensation for the massive amount of infringement of our copyrights.

32. Without these suits, I believe infringers would feel free to steal our movies without consequence.

33. In conclusion, we want the courts to know that we are a small business and we need the law to be enforced to ensure our survival. It is getting more difficult for us every day and we hope that in the future there will be a better way to protect our copyrights.

34. We are passionate about our work and our business. For us, this is the American Dream!

35. It is our hope that by upholding the law, the courts will protect our ability to

continue with our dream and allow all creative people the ability to make a living by distributing their work in this fast-paced digital age.

36. Thank you in advance for your time and consideration of this matter, please do not hesitate to ask if we can clarify any further questions.

FURTHER DECLARANT SAYETH NAUGHT.

DECLARATION

PURSUANT TO 28 U.S.C. § 1746, I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

COLETTE FIELD

By: Collette Field